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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 441.

UNITED STATES MORTGAGE COMPANY AND MORTGAGE GUARANTEE COMPANY,

PETITIONER,

vs.

MARY E. MATTHEWS AND JOHN MATTHEWS.

BRIEF IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND.

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STATEMENT OF CASE.

The Mortgage Guarantee Company, a body corporate of the State of Delaware, was organized about the year 1906 for the purpose of loaning money to be secured by mortgages, which mortgages were in turn sold by it, the said company guaranteeing the repayment thereof to the purchaser. Up until the year 1917 or 1918 it sold mortgages in their entirety (Record p. 36). Thereafter it sold fractional interests in mortgages, said interests being evidenced by an assignment of an undivided share in the mortgage and the mortgage debt (Record pp. 8, 36, 37). Outside of the State of Maryland this procedure was not followed (Record p. 37). The respondents are the holders of an assignment of an undivided share in a mortgage

and in the mortgage debt secured thereby, and as such were entitled to a decree of foreclosure and a sale under the decree. In order to obtain the decree it is only necessary to file an ex parte petition for a decree and to file the mortgage as an exhibit. The decree is signed irrespective of default in the terms of the mortgage, but the terms of the decree (Record p. 111) as to sale only become effective upon default. The respondents, as assignees, were entitled to such a decree.

Richardson vs. Owings, 86 Md. 663.

At the time the Mortgage Guarantee Company assigned the share in the mortgage to the respondents said mortgage was in default because of non-payment of taxes.

In the early part of 1933 the said Mortgage Guarantee Company became involved in financial difficulties, and on February 14th, 1933, sent to the holders of assignments of interests in mortgages and to holders of certificates an open letter (Record p. 24); the respondents refused to consent to the plan of re-adjustment because thereunder the Mortgage Guarantee Company could extend the time for the repayment of the mortgage held by the respondents, and also because thereunder the respondents would agree to pay to the Mortgage Guarantee Company an additional one per cent of the interest due on said mortgage (Record p. 26).

In the fall of 1933 several holders of assignments in mortgages, who had not assented to the re-adjustment plan, obtained decrees under the assents contained in the mortgages of which an undivided interest had been assigned to such holders, thereupon the said Mortgage Guarantee Company obtained decrees in many cases and had its appointees made trustees in said cases (Record pp. 50, 51, 52), but said trustees did not make any attempt

to sell the properties to satisfy the mortgage debt (Record p. 49), said action being taken to prevent others interested in the mortgages from exercising their rights (Record p. 56). Thereafter at the special session of the Legislature of Maryland, 1933, the counsel for the Mortgage Guarantee Company prepared and had introduced by his law partner, an Act which became Chapter 56 of the Acts of 1933, Special Session of the General Assembly of Maryland (Record pp. 48, 49, 52, 53). This Act provided that in the City of Baltimore no decree should thereafter be passed under the assent to a decree contained in a mortgage during the period of emergency therein declared unless such application be made or concurred in by the record holders of not less than 25% of the unpaid mortgage debt; that the period of emergency was declared as a matter of legislative determination to be for the period from the date when said Act took effect until June 1st, 1935. At the same session of the Legislature a Bill was introduced (Record p. 90) declaring as a matter of legislative determination that a period of emergency existed which would expire June 1st, 1935; that therefore during such period of emergency foreclosure of a mortgage for principal defaults should be suspended, as well as any action on a bond for principal default. This Act, however, was not passed by the Legislature (Record pp. 41, 42).

On December 22, 1933, seven days after Chapter 56 aforesaid became effective, Mary E. Matthews and John Matthews filed a petition for a decree of foreclosure and the appointment of a trustee to make sale (Record p. 2); the United States Mortgage Company, as owner of the equity of redemption, and the Mortgage Guarantee Company, representing other holders of undivided interest in said mortgage, intervened and set up the provisions of

Chapter 56 of the Acts of 1933, Special Session, as a reason why the petition for a decree should not be granted. The Circuit Court No. 2 of Baltimore City held said Act unconstitutional, which action of said Court was affirmed on appeal to the Court of Appeals of Maryland.

ARGUMENT.

POINT A.

THE WRIT OF CERTIORARI SHOULD NOT BE GRANTED BECAUSE THERE IS NO SUBSTANTIAL FEDERAL QUESTION INVOLVED.

(1) The decision of the Court of Appeals of Maryland rested on grounds of local procedure for the foreclosure of mortgages in Baltimore City.

In the case of Central Vermont R. Co. vs. White, 238 U. S. 507, it was held that matters affecting the remedy are governed by the law of the forum, and a decision of a state court on a matter such as the form of the action, sufficiency of the pleadings, rules of evidence is not reviewable by the United States Supreme Court.

The Court of Appeals by its decision, held that Chapter 56, Acts of 1933, Special Session, had no effect on the Matthews mortgage (Record p. 127); that all those mortgagees, holding an undivided interest in a mortgage made prior to December 15, 1933, still had the right to proceed by foreclosure under the assent to a decree, and that the said Act meant that mortgages made after December 15, 1933, could not be foreclosed under an assent to a decree except in the manner prescribed by the Act; in other words: the procedure for foreclosure of mortgages made before the date of the Act should be different than the procedure for foreclosure of mortgages made after the date of the Act.

Chapter 56 of the Acts of 1933, Special Session, proposed to add a new section to Article 4, Section 720, Code of Public Local Laws (Petitioner's Brief p. 23). Article 4, Section 720, refers to the method of foreclosing mortgages in Baltimore City wherein the mortgagor shall declare his assent to the passing of a decree for sale; this procedure for sale of mortgaged properties in Baltimore City was first authorized by Chapter 181 of the Acts of 1833 (Record p. 105). The Court of Appeals, in the case of Williams vs. Williams, 7 Gill, 232, held Chapter 181 of the Acts of 1833 to be "a summary mode of proceeding by which the mortgagee may arrive at a decree by stipulating for it in his mortgage"; thus declaring that this method of enforcing the collection of the mortgage indebtedness was a matter of *local* procedure. It is a well recognized principle of law that a decision of a state Court resting on grounds of state procedure does not present a Federal question:

Gibson vs. Mississippi, 162 U. S. 565
Hopt vs. Utah, 110 U. S. 574
Loeber vs. Schroeder, 149 U. S. 580.

(2) Chapter 56, Acts of 1933, Special Session, is local in nature, being confined to Baltimore City, relates only to a certain designated class of persons in the City of Baltimore, and is not of importance to the public.

In the case of Layne & Co. vs. Western Well Works, 261 U. S. 387 at p. 393, the Court said, "• • • • it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties • • •."

Southern Power Co. vs. North Carolina Pub. Ser. Co., 263 U. S. 508.

The testimony of the witnesses, both for petitioners and respondents, shows that the Mortgage Guarantee Company is the only person or corporation in the State of Maryland that sells fractional interests in mortgages and assigns an undivided share in said mortgage to the purchaser. This testimony is uncontradicted (Record pp. 37, 38; Fairbank; pp. 43, 44, 45, 46, 47, Buck; p. 56, Tucker). The Record further discloses that Chapter 56, Acts of 1933, Special Session, was prepared and introduced at the instigation of the Mortgage Guarantee Company (Record pp. 48, 49, 52, 53), and was designed for the specific relief of said Mortgage Guarantee Company (Opinion of Court—Record pp. 108-109). Said statute is an attempted moratorium, not for debtors, but for a creditor, and for a 75% creditor against a 25% creditor. The Act is not of importance to the public, but only of importance to the Mortgage Guarantee Company. An attempt is made to justify the public importance by the declaration of a state of emergency, but the attempt is fallacious because the argument of the petitioners on this point is: as to mortgages in Baltimore City which have been assigned and in which undivided interests are held by *more than one person,* an economic emergency exists, which runs from December 15, 1933, to June 1st, 1935, according to legislative determination; as to *all other mortgages* there is *no* emergency affecting and threatening the welfare, comfort and safety of the people during the same period of time; the legislature not having passed the bill for a general suspension of foreclosure for the same period (Record p. 90).

POINT B.

THE WRIT OF CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE DECISION OF THE COURT OF APPEALS IS BASED UPON STATE LAW AS WELL AS THE LAW OF THE CONSTITUTION OF THE UNITED STATES.

To give the Supreme Court jurisdiction it must appear affirmatively not only that the Federal question was presented for decision, but that its decision was necessary to a determination of the case, and that the decision could not have been given without deciding it; and when it does not appear on which of two grounds the judgment was based, then if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, the Supreme Court will not assume jurisdiction.

Klinger vs. Missouri, 80 U. S. 257
Rogers vs. Hennepin County, 240 U. S. 184
People vs. Atwell, 261 U. S. 590.

Even though the state court decided the Federal question, still if the Court also decided an action could not be sustained under the State Statute, the Supreme Court will not assume jurisdiction.

De Saussure vs. Gaillard, 127 U. S. 216
Consolidated Turnpike Co. vs. Norfolk & Ocean R. R., 228 U. S. 596
Preston vs. Chicago, 226 U. S. 447
Wood vs. Chese borough, 228 U. S. 672.

The defendants in error contended that the Act of the Special Session of 1933, Chapter 56, was unconstitutional as conflicting with

(a) Article 1, Section 10 of the Constitution of the United States.

(b) Section 1 of the 14th Amendment to the Constitution of the United States.

(c) Articles 19, 23 and 44 of the Maryland Declaration of Rights (Record p. 120).

Articles 19 and 23 of the Declaration of Rights, contain provisions similar to those of the Constitution of the United States (Record p. 16). The Trial Judge held that the Statute violated these sections of the Bill of Rights as well as the Constitution of the United States, because it impaired the obligation of a contract, and because it was confined in its application to a limited class of persons, i. e. holders of a less than 25% interest in mortgages on property in Baltimore City, and that such classification was unreasonable and arbitrary (Record p. 101). The Court of Appeals affirmed the decree of the Circuit Court No. 2, but ruled that such classification was reasonable and not arbitrary.

Article 44 of the Declaration of Rights is as follows:

> "The provisions of the Constitution of the United States and of this State, apply as well in time of war as in time of peace; and any departure therefrom, or violation therefrom, under the plea of necessity, or any other plea, is subversive of good government and tends to anarchy and despotism."

These rights guaranteed to the individual by the Constitution of the United States, therefore are also guaranteed to the citizens of Maryland by the Constitution of Maryland, which expressly prohibits their suspension by emergency legislation, and the prohibition of the passage of laws impairing the obligation of contract is therefore embodied in the Constitution of Maryland.

Chapter 56 of the Acts of 1933, Special Session, is a purely local law. It applies only in the City of Baltimore—it was designed to deprive a certain class of persons (holders of less than 25% interest in mortgages in Baltimore City) of a certain remedy, which was part of their mortgage contract, which remedy was—in the language of the Court of Appeals—"an extremely valuable portion of the contract", the taking away of which rendered such legislation unconstitutional and void (Record p. 124). The constitutionality of such Act was so dubious to the Maryland General Assembly, that it attempted to justify it on the grounds of emergency, as set forth in the lengthy preamble to the Act.

This justification was not sustained, for in the language of the Court of Appeals: "If the law under consideration was unconstitutional in the absence of the emergency, in our opinion it cannot be held to be constitutional because of any fancied or real emergency, but its constitutionality must be tested in the same way as if it had been passed in times of economic prosperity" (Record pp. 125 and 126).

In spite of the express prohibition of Article 44 of the Maryland Declaration of Rights, the Maryland General Assembly by this Act attempted to suspend a contractual right guaranteed "in time of war as well as in time of peace" by the Maryland Declaration of Rights.

The decision of the Court of Appeals was therefore well founded upon principles of state law, and the Supreme Court should therefore not assume jurisdiction over this case.

Consolidated Turnpike Co. vs. Norfolk Ocean R. R., 228 U. S. 596.

The Court of Appeals in discussing the question of impairment of contract by Chapter 56, Acts of 1933, Special Session, concludes that subject as follows: "If, then, all of such remedies are taken away and there remains a totally inadequate remedy, as compared to those taken away, it seems clear that an attempt to make such legislation applicable to pre-existing mortgages is unconstitutional and void" (Record p. 124).

It is submitted that the use of this language also justifies the Supreme Court to determine that the decision of the Court of Appeals was based on the conflict of Chapter 56, Acts of 1933, Special Session, with the constitutional prohibitions contained in the Maryland Declaration of Rights, and that therefore the Supreme Court should not assume jurisdiction.

Respectfully submitted,

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